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FIRST GENERAL COUNSEL'S REPORT

MUR: 6823

DATE COMPLAINT FILED: May 15, 2014

DATE OF AMENDMENT: May 19, 2014

DATE OF NOTIFICATIONS: May 22, 2014

DATE OF LAST RESPONSE: July 21, 2014

DATE ACTIVATED: September 4, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: January 29, 2019

Latest: May 30, 2019

ELECTION CYCLE: 2014

COMPLAINANT:

Jenny Beth Martin, Tea Party Patriots Fund

RESPONDENTS:

Mississippi Conservatives and Brian Perry in his
official capacity as treasurer

Trustmark National Bank

Harry M. Walker

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)¹

52 U.S.C. § 30104(b)

52 U.S.C. § 30118(a)

11 C.F.R. § 100.52

11 C.F.R. § 100.82

11 C.F.R. § 100.142

11 C.F.R. § 104.3(d)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

I. INTRODUCTION

The Complaint, as amended, alleges that Mississippi Conservatives and Brian Perry in his official capacity as treasurer (collectively, "MC") violated the Act by: (1) not disclosing that a person made a contribution to MC by pledging a certificate of deposit ("CD") worth approximately \$250,543 as collateral for a \$250,150 loan from Trustmark National Bank ("Trustmark") to MC; and (2) by failing to disclose the identity of the contributor and other loan details in reports filed with the Commission. The Amended Complaint also alleges that Trustmark made, Trustmark regional vice president Harry M. Walker consented to making, and MC received, a prohibited national bank contribution when Trustmark loaned \$250,150 to MC without having a secured interest in the collateral for the loan. Finally, the Amended Complaint alleges that Walker, acting on behalf of Trustmark, certified a portion of an MC disclosure report that inaccurately described the collateral for the loan.

We recommend that the Commission find no reason to believe that Trustmark made and Walker consented to a prohibited contribution to MC because the totality of the circumstances indicates that Trustmark was assured of repayment when it made the loan. Accordingly, we also recommend that the Commission find no reason to believe that MC received a prohibited contribution. Additionally, we conclude that Walker's inaccurate certification does not constitute an independent violation of the Act or Commission regulations by either Trustmark or Walker.

However, we recommend that the Commission find reason to believe that MC violated the disclosure requirements of the Act and the Commission's regulations because the pledge of the CD was a contribution, MC did not identify the contributor and now denies that it must, and

MC made repeated inaccurate representations regarding the loan on its reports. Finally, we recommend the Commission authorize pre-probable cause conciliation with MC.

II. BACKGROUND

A. Respondents

MC, which registered with the Commission on January 15, 2014, is an independent-expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. MC Resp. at 2; MC Statement of Organization at 1-2. Brian Perry is the treasurer of MC and its sole director. Corporate Resolution to Borrow / Grant Collateral, Ex. E to Trustmark Resp.; MC Board Minutes of Special Actions, Ex. E to Trustmark Resp. Through October 15, 2014, MC had raised \$3,357,903.00 and disbursed \$3,020,285.90. MC Pre-General Report at 2 (Oct. 23, 2014). MC engaged in less activity after the primary election; since July 1, 2014, MC disclosed receipts of \$390,250, disbursements of \$84,901.35, and cash on hand of \$337,617.10. *Id.*; Oct. Quarterly Rpt. at 2 (Oct. 15, 2014).

Trustmark National Bank ("Trustmark") is a nationally-chartered bank headquartered in Jackson, Mississippi, and is MC's depository. Trustmark Resp. at 2; MC Statement of Organization at 4 (Jan. 14, 2014). Harry M. Walker is Trustmark's Regional President of Central Mississippi. Walker Aff. ¶¶ 1-2 (attached to Trustmark Resp.).

B. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an Undisclosed Person's CD as Collateral

On September 3, 2013, Trustmark created a \$250,000 CD with a nine-month term for an unidentified customer. Book Entry - Certificate of Deposit Receipt, Trustmark Resp. Ex. A; Jeremy Bond Aff. ¶ 3 (attached to Trustmark Resp.). Sometime before January 29, 2014, MC asked this unidentified customer to provide collateral for a loan from Trustmark to MC.

1 Assignment of Deposit Account ("Assignment") at 1, Trustmark Resp. Ex. D. Further, Walker
2 received a request — from a person he did not identify — for Trustmark to loan \$250,000 to MC
3 to be secured by the undisclosed depositor's CD, which by that time was worth \$250,543.74.
4 Walker Aff. ¶ 7. Walker directed Jeremy Bond, a Vice President and Branch Manager at
5 Trustmark's Jackson, Mississippi, main office, to prepare the loan paperwork and process the
6 loan. *Id.* ¶ 7, 8. Walker dictated the terms of the loan to Bond, including the interest rate,
7 amount, and maturity date. Bond Aff. ¶ 4.

8 In addition to the loan documents to be signed by MC, the loan paperwork included an
9 Assignment of Deposit Account ("Assignment"), by which the unknown person would pledge
10 the CD as collateral for Trustmark's loan to MC. *See* Boarding Data Sheet, Trustmark Resp. Ex.
11 C; Assignment of Deposit Account, Trustmark Ex. D. The Assignment provides that it grants
12 Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes
13 Trustmark as a secured creditor under Mississippi law.² Assignment at 2-3; Trustmark Resp.
14 at 3-5, 8.

15 On January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents,
16 Bond Aff. ¶ 10, and Trustmark disbursed \$250,000 to MC. Boarding Data Sheet, Trustmark
17 Resp. Ex. C.³ MC used the loan funds for a \$219,540 independent expenditure it made two days

² Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." Ex. B to Bond Aff. The CD's owner was also prohibited from transferring or encumbering the CD. *Id.*

³ The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. Bond explained that the two rates were calculated using different formulas. Bond Aff. ¶ 7. The extra \$150 of the loan principal in the promissory note was for a processing fee.

1 later for communications opposing candidate Chris McDaniel, Sen. Cochran's opponent in the
2 primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31, 2014) (disclosing that an
3 expenditure was made or obligation incurred on January 31, 2014, for communications opposing
4 McDaniel); MC Amended April Quarterly Rpt. at 17 (May 17, 2014) (describing MC's receipt of
5 \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11, 13 (May 17, 2014)
6 (disclosing no cash on hand at the start of the reporting period and the receipt of a total of four
7 itemized contributions before January 31, 2014, totaling \$160,000).

8 Trustmark, however, did not receive the signed Assignment from the CD's owner until
9 February 5, Bond Aff. ¶ 11 — one week *after* it had disbursed the loan proceeds to MC.⁴
10 According to Bond, "it is not unusual for a bank to close on a loan without the complete set of
11 signed loan documentation when, as here, there is an existing banking relationship with the
12 individual whose signature is requested, where the individual has committed to sign the
13 paperwork, and where there is no reason to believe that the paperwork will not be signed."
14 *Id.* ¶ 12.

15 **C. MC Inaccurately Discloses the Trustmark Loan**

16 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,
17 which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees
18 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about
19 these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had
20 *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for
21 the loan as "\$0.00." *Id.* MC also reported that no other parties were secondarily liable for the

⁴ The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 loan. *Id.* The Schedule C-1 also asked if the Committee had pledged its future receipts as
2 collateral, and MC correctly responded "No." The Schedule C-1 also asked, "If neither of the
3 types of collateral described above was pledged for this loan, or if the amount pledged does not
4 equal or exceed the loan amount, state the basis upon which this loan was made and the basis on
5 which it assures repayment." MC did not answer this question, nor did it attach the loan
6 agreement, as the Schedule C-1 directs.

7 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as
8 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the
9 disclosures on the Schedule C-1 were accurate, Trustmark was aware that loans had to be made
10 on a basis that assures repayment, and the loan complied with the requirements set forth at 11
11 C.F.R. §§ 100.82 and 100.142.⁵

12 MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan
13 documents: the Promissory Note, the Board Resolution, and the Errors and Omissions
14 Agreement. MC did not, however, attach the Assignment, the document indicating that it did not
15 own the pledged CD. MC asserts that "the existence of this certificate of deposit as collateral
16 was clearly established" in the Promissory Note. MC Resp. at 11. Indeed, the Promissory Note
17 states that the collateral for the loan was "certificates of deposit described in an Assignment of
18 Deposit Account dated January 29, 2014." Even so, the documents MC disclosed do not indicate
19 that a third party owned the CD, and MC's Schedule C-1 erroneously states that there was *no*

⁵ This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. *Id.* About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. See MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). But in his sworn affidavit, Walker avers that he was not given the C-1 to sign until April 15. Walker Aff. ¶ 16.

1 collateral and no secondarily liable party. Trustmark certified these inaccurate representations as
2 true.

3 On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the
4 misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00,
5 Trustmark did not have a secured interest in the collateral, and there were no secondarily liable
6 parties. MC continued to leave blank the space provided to explain how the loan's repayment
7 was assured if the loan was not secured by collateral or future receipts. MC Amended April
8 Quarterly Report at 26 (May 12, 2014). It also continued to represent that Trustmark had
9 certified the accuracy of the information on the form and the loan's compliance with the
10 Commission's regulations. *Id.*

11 On May 15, 2014, the Complainant filed the original Complaint, which relied on the
12 Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan.
13 The Complaint alleged that Trustmark made a prohibited national bank contribution to MC
14 because its loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which
15 require a lender to have an assurance of repayment. Compl. at 4-7.

16 Two days later, MC filed its Second Amended April Quarterly Report on which it
17 checked "Yes" in response to the question asking if the loan was collateralized by any one of
18 various types of security, including a certificate of deposit. MC Second Amended April
19 Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC
20 wrote "Certificate of Deposit." *Id.* MC claims that this Amended Report established that its loan
21 was secured by the undisclosed person's CD. MC Resp. at 11. But MC neither disclosed that it
22 did not own the CD that secured the loan, nor did MC provide the loan document that showed
23 that another party owned the CD, much less identify the owner of the CD. MC stated in response

1 to another question on the form that Trustmark had a perfected security interest in the collateral,
2 but it continued to state that no other party was secondarily liable for Trustmark's loan to MC.⁶
3 MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014).

4 The Amended Complaint, filed on May 19, alleges that the as-yet-unidentified owner of
5 the pledged CD is an undisclosed contributor to MC, and MC violated the Act's reporting
6 requirements by not disclosing this contributor's identity. Amended Compl. at 5-8. It also
7 alleged that Trustmark violated the Commission's regulations because it lacked a perfected
8 security interest in the CD serving as collateral for the loan. *Id.* at 5.

9 MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To
10 date, MC and Trustmark have not identified the owner of the pledged CD.

11 As to MC's alleged failure to disclose the identity of the person who pledged collateral
12 for the loan, MC contends that it need not do so. MC Resp. at 13-19 (asserting that Commission
13 regulations require only the disclosure of "guarantors" and "endorsers," thus, "[n]othing in
14 federal campaign finance law provide[s] a reasonable basis upon which to assert that the provider
15 of a certificate of deposit collateralizing a loan is automatically a guarantor or endorser of that
16 loan"). In contrast, the analysis in Trustmark's Response implicitly acknowledges that the
17 person pledging the CD as collateral for MC's loan made a contribution to MC—Trustmark
18 focuses on the issue of the contribution prohibitions struck down by *Citizens United v. Fed.*
19 *Election Comm'n.*, 558 U.S. 310 (2010), but does not assert that there was no disclosable
20 contribution. Trustmark Resp. at 7. On this issue, Trustmark asserts that MC's Amended April

⁶ This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But Walker avers that "it is my understanding that [MC] has filed multiple versions of the Schedule C-1 with the [Commission], all of which purport to include an electronic version of my signature. I was never consulted by [MC] prior to its making these additional C-1 filings." Walker Aff. ¶ 17.

Quarterly Report was accurate because the owner of the CD was not an endorser or guarantor of its loan to MC, as those terms are understood in the banking industry; it had a perfected security interest in the pledged CD; and the errors in the unamended MC Schedule C-1 were *de minimis*. Trustmark Resp. at 11-14.

As to Trustmark's allegedly prohibited contribution to MC by making the loan, Trustmark responds that the loan was not a contribution because Trustmark complied with the Act and the Commission's regulations, but even if it was a contribution to MC, the prohibition on national bank contribution is unconstitutional following *Citizens United*. Trustmark Resp. at 5-9; *see also* MC Resp. at 8-13. According to Trustmark, the pledged CD assured it of repayment and thus the loan was not a contribution from Trustmark to MC. Trustmark Resp. at 5-11.

III. ANALYSIS

A. Trustmark's Loan to MC

1. *Trustmark's Loan Was Not a Contribution to MC Because Trustmark Was Assured that It Would be Repaid*

The Amended Complaint alleges that Trustmark made a prohibited contribution to MC by loaning it \$250,150 without having a perfected security interest in the CD later pledged as collateral. Amend. Compl. at 5. The Complaint further alleges that Walker, as a bank officer approving a loan that was a prohibited contribution, also violated 52 U.S.C. § 30118 (formerly §441b(a)). Compl. at 6; Amended Compl. at 8-9.

The Act prohibits national banks from making contributions and prohibits political committees from knowingly receiving them. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). Contributions include "loans" or "anything of value" made for the purpose of influencing an election, 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do

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1 not include bank loans made in the ordinary course of business "on a basis which assures
2 repayment," that are "evidenced by a written instrument and subject to a due date or amortization
3 schedule," and which are made at a usual and customary interest rate for the lender for the
4 category of loan involved. 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii));
5 *see also* 11 C.F.R. § 100.82(a) (a bank loan is not a contribution if it has those characteristics).
6 The record establishes that the loan was made through a written instrument with a due date.
7 Further, there is no allegation or information in the record suggesting that the interest rate
8 (2.86%) on the loan was not Trustmark's usual and customary rate applicable to a loan backed
9 by collateral on deposit equal in value to the loan.

10 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis
11 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,
12 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a
13 loan to be considered "made on a basis that assures repayment," the Commission's regulations
14 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*
15 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is
16 equal to or greater than the loan amount and any senior liens as determined on the date of the
17 loan"; and (c) "the political committee provides *documentation* to show that the lending
18 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)
19 (emphasis added).

20 The transaction between Trustmark and MC clearly did not meet the section
21 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.⁷ If, as in this

⁷ Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds

1 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the
2 totality of the circumstances on a case-by-case basis in determining whether a loan was made on
3 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).⁸ In past matters, the Commission has
4 concluded that a bank loan did not constitute a prohibited contribution under the totality of the
5 circumstances when the bank made the loan while intending that it would be assured of
6 repayment. *See* General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not
7 secured by collateral for a period of 90 days nonetheless was assured of repayment under the
8 totality of the circumstances because the bank intended that repayment be assured where, *inter*
9 *alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General
10 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the
11 circumstances, bank intended to assure repayment of the loan and therefore did not make a
12 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit
13 history and relationship with the bank).

14 The available information indicates that Trustmark was assured of repayment when it
15 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the
16 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark
17 worth approximately the same as the loan principal would serve as the loan's collateral, and

to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. Bond Aff. ¶ 12. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. *See* Miss. Code Ann. 75-9-314; Trustmark Resp. at 8.)

⁸ *See also* Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

1 received the executed Assignment from the CD's owner one week after the loan was made. We
2 therefore recommend that the Commission find no reason to believe that Trustmark or Walker
3 violated Section 30118 (formerly 441b). For the same reasons, we recommend that the
4 Commission find no reason to believe that Mississippi Conservatives and Brian Perry in his
5 official capacity as treasurer received a prohibited contribution from Trustmark in violation of
6 Section 30118(a) (formerly 441b(a)).⁹

7 2. *Trustmark and Walker's Inaccurate Schedule C-1 Certifications*
8 *are not Independent Violations of the Act*

9 Complainant also alleges that Trustmark violated the Act's disclosure requirements
10 because it certified MC's inaccurate statements about the loan on the original Schedule C-1.
11 Amended Compl. at 7, 9. There is no dispute that the bank's certification was inaccurate, but
12 neither the Act nor the regulations attaches liability to the bank certifying the false statements.
13 Instead, the party filing the relevant report is responsible for its accuracy, and we address MC's
14 reporting liability in Section III.B below.

15 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees
16 borrowing funds to submit a certification from the lending institution that (1) the borrower's
17 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or
18 line of credit was made or established on terms and conditions no more favorable at the time than

⁹ Because we recommend that the Commission find no reason to believe that Trustmark made a contribution, it is not necessary to reach Trustmark's argument that the national bank contribution prohibition is unconstitutional in light of *Citizens United*. Trustmark Resp. at 9. We note, however, that *Citizens United* did not address the prohibition against contributions by national banks in Section 30118. The Commission has consistently indicated that this prohibition remains undisturbed by *Citizens United*. See *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 79 Fed. Reg. 62,797, 62,801 (Oct. 21, 2014) (maintaining existing prohibitions against contributions and expenditures by national banks); *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 76 Fed. Reg. 8083, 8085 n.6 (proposed Dec. 27, 2011) (Commission's proposed rulemaking to implement *Citizens United* states that "Corporations that are foreign nationals, government contractors, or national banks, and corporations that are organized by authority of any law of Congress continue to be prohibited from making independent expenditures or electioneering communications. 2 U.S.C. 441b, 441c and 441e.").

1 those imposed for similar credit granted to borrowers of comparable credit worthiness, and
2 (3) the institution is aware of the requirement for terms which assure repayment and the bank has
3 complied with 11 C.F.R. § 100.82 and 100.142.¹⁰ See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26
4 at 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it
5 promulgated these regulations, in addition to helping banks avoid making prohibited
6 contributions, these lender certifications serve an important and public role by ensuring the
7 reliability of committee loan disclosures based on information exclusively in the possession of
8 the banks. See *Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.
9 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

10 Trustmark and Walker acknowledge that some of Walker's certifications were inaccurate,
11 and explain that Walker focused on the statements on the Schedule C-1 regarding the loan
12 amount and interest rate, but not the other statements. They state that Walker believed MC was
13 "versed in FEC regulations," so he assumed the other statements on the form were accurate.
14 Trustmark Resp. at 4, 14; Walker Resp. at 3, 8. They also argue that the errors in the Schedule
15 C-1 were *de minimis*. Trustmark Resp. at 1, 14; Walker Resp. at 11-12. The bank's excuses are
16 weak, and the suggestion that the Commission should overlook the bank's negligence conflicts
17 with the Commission's statements in the Explanation and Justification.

18 Nevertheless, a false or inaccurate certification, standing alone, is not a violation by the
19 lender of a duty imposed by the Act or Commission regulations. The Commission's regulations,

¹⁰ Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

rather, impose a duty *on committees* to file accurate Schedule C-1s with properly reviewed lender's certifications. (We discuss those issues in the next section.) Accordingly, we recommend that the Commission find that there is no reason to believe that Trustmark or Walker violated the Act or Commission regulations when Walker certified the inaccurate Schedule C-1.

B. MC Reporting Violations

I. The Pledged CD Was an In-Kind Contribution, which MC Received and Did Not Disclose

All political committees, including those like MC, must disclose the contributions they receive, including the identity of any person who makes over \$200 in contributions within a calendar year, together with the date and amount of any such contribution. 52 U.S.C. § 30104(b)(2), (3) (formerly 2 U.S.C. § 434(b)(2), (3); *see also SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) (independent-expenditure-only political committee may be required to comply with the Act's contribution disclosure requirements); Advisory Op. 2010-11 (Commonsense Ten) (proposed independent-expenditure-only committee would comply with the Act's disclosure requirements if, among other things, it disclosed its contributors). A contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i); *see also* 11 C.F.R. § 100.52(a) (same). "[T]he term *loan* includes a guarantee, endorsement, and any other form of security." 11 C.F.R. § 100.52(b) (emphasis in original); *see also id.* § 100.52(d)(1) (provision of a security is an in-kind contribution). Although neither the Act nor the regulations defines the word "security," the term is universally understood to mean "[c]ollateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid . . . any money or credit extended to a debtor." BLACK'S LAW DICTIONARY, 1476-1477 (9th ed. 2009).

1 Given these basic tenets, it follows that a person who pledges property as collateral for a
2 bank's loan to a committee or candidate makes an in-kind contribution. For example, when a
3 candidate secures a loan that is used for the candidate's campaign through the use of collateral
4 the candidate jointly owns with a spouse, that spouse will be considered a contributor if the
5 amount of the loan exceeds the value of the candidate's ownership share of the collateral.
6 11 C.F.R. § 100.52(b)(4); General Counsel's Rpt. No. 2 at 1-2, 4-7, MUR 5421 (John Kerry for
7 President) (loan to candidate secured by \$12.8 million house that candidate and spouse jointly
8 owned would have constituted a contribution from the spouse if loan amount exceeded \$6.4
9 million, the value of the candidate's ownership share of the house, but it did not); Certification,
10 MUR 5421 (Dec. 12, 2005); Conciliation Agreement at ¶ 14, MUR 5685 (Joe Turnham for
11 Congress) (individual's provision of real estate and stock to serve as collateral for bank loan to
12 candidate constituted a contribution from the owner of the collateral to the candidate); cf.
13 Conciliation Agreement at ¶¶ IV.8-12, V.1, MUR 5453 (Trovato) (respondent made a
14 contribution to candidate when he loaned candidate \$300,000 to create a certificate of deposit for
15 use as collateral for loan to candidate).

16 Similarly, the Commission's bank loan exception to the definition of "contribution"
17 provides, among other criteria, that loans secured by "collateral *owned by the candidate or*
18 *committee* receiving the loan" are not contributions. 11 C.F.R. § 100.82(e)(1)(i) (emphasis
19 added). Thus, if the borrower does not own the collateral for the loan, other issues — such as
20 contribution limits, prohibitions, and disclosure requirements — may be implicated. To illustrate
21 this point, 11 C.F.R. § 100.82(e)(1)(ii) provides that loan "[a]mounts guaranteed by secondary
22 sources of repayment, *such as* guarantors and cosigners, shall not exceed the contribution limits
23 of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part

1 115.” (emphasis added). *See also* 11 C.F.R. § 100.52(b)(3) (endorsers and guarantors “shall be
2 deemed to have contributed that portion of the total amount of the loan for which he or she
3 agreed to be liable in a written agreement”).¹¹

4 The facts and law are clear. MC asked an individual to provide collateral to secure
5 Trustmark’s \$250,150 loan to MC. The individual executed an agreement with Trustmark
6 providing that his or her CD would serve as collateral for the loan and be used to pay MC’s loan
7 if MC defaulted. As explained above, third-party pledges of collateral for loans to political
8 committees are contributions. Because MC requested and knowingly received this valuable
9 security in order to get its loan, it was an in-kind contribution from the individual to MC. As
10 such, the Act required MC to disclose the identity of the contributor, the date of the contribution,
11 and the amount of the contribution, and it did not.

12 MC argues that it does not have to disclose the contributor’s name because that person
13 was not a “guarantor” or “endorser.” MC Resp. at 18-19. This argument essentially ignores the
14 Act’s expansive definition of “contribution” to mean “anything of value,” including “loans,” as
15 well as the Commission’s regulations at section 100.52(b) expressly stating that the provision of
16 a security is a “loan” and the statement in section 100.52(d)(1) that provision of a security is a
17 thing of value, thus, an in-kind contribution.

18 Consequently, we recommend that the Commission find reason to believe that
19 Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 52 U.S.C.
20 § 30104(b) (formerly 2 U.S.C. § 434(b)).

21

¹¹ We do not need to address Respondents’ contention that the contributor did not qualify as either a guarantor or endorser, as Respondents understand those terms, because the disclosure obligations under the Act and Commission regulations are not limited to only those specific subsets of persons who otherwise provide security for a loan to a political committee. The particular requirements of disclosing in-kind contributions are addressed in 11 C.F.R. § 104.13.

2. *MC Inaccurately Disclosed Other Information About Trustmark's Loan*

Additionally, MC was required to disclose, *inter alia*, "the types and value of traditional collateral or other sources of repayment that secure the loan . . . whether that security interest is perfected" and "[a]n explanation of the basis upon which the loan was made . . . if not made on the basis of either traditional collateral or the other sources of repayment described in 11 C.F.R. 100.82(e)(1) and (2) and 100.142(e)(1) and (2)." 11 C.F.R. 104.3(d)(1)(iv). As explained above, MC was also required to submit an appropriate certification from Trustmark regarding the loan. 11 C.F.R. § 104.3(d)(1)(v).


MC repeatedly violated these regulations by failing to disclose that the loan was secured by collateral and concealing the CD owner's identity. And by failing to reveal the CD's existence for a time, MC additionally failed to disclose that Trustmark had a perfected security interest in it. Additionally, as discussed in Section III.A.2, MC violated the Commission's regulations by providing incorrect bank certifications, including the untrue representations in its amended reports that Walker had certified all of the statements in them. The available information indicates that Walker took a number of MC's representations at face value and did not independently verify them. Trustmark Resp. at 4, 14; Walker Resp. at 3, 8. It even appears that MC applied Walker's electronic signature to its amended reports without Walker's knowledge. Walker Aff. At ¶ 17. Consequently, we recommend that the Commission find reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).


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V. RECOMMENDATIONS

1. Find no reason to believe that Trustmark National Bank violated 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b) by making a prohibited contribution by loan.
2. Find no reason to believe the allegation that Harry M. Walker violated 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b) by consenting to the making of a prohibited contribution.
3. Find no reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated of Section 30118(a) (formerly 441b(a)) by receiving a prohibited contribution from Trustmark.
4. Find reason to believe that Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 C.F.R. § 104.3(d)(1)(iv-v).
5. Approve the attached proposed Factual and Legal Analyses.
6. Enter into pre-probable cause conciliation with Mississippi Conservatives and Brian Perry in his official capacity as treasurer.
7. Approve the attached proposed conciliation agreement.
8. Approve the appropriate letters.

Date: 12/3/14


Stephen Gura
Deputy Associate General Counsel


Mark D. Shonkwiler
Assistant General Counsel


Michael A. Columbo
Attorney

1

2 Attachments:

3 1. Proposed Trustmark National Bank Factual and Legal Analysis

4 2. Proposed Mississippi Conservatives Factual and Legal Analysis

5 3. Proposed Harry M. Walker Factual and Legal Analysis

6

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT:

)
) MUR: 6823
)
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6 Trustmark National Bank

8
9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by
11 Tea Party Patriots Fund and its Chair, Jenny Beth Martin. *See* 52 U.S.C. § 30109(a)(1)
12 (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Trustmark National
13 Bank ("Trustmark") made a prohibited national bank contribution when Trustmark loaned
14 \$250,150 to Mississippi Conservatives ("MC") without Trustmark having a secured interest in a
15 certificate of deposit ("CD") worth approximately \$250,543 that a Trustmark depositor pledged
16 as collateral for the loan. The Amended Complaint also alleges that Trustmark certified a
17 portion of an MC disclosure report that inaccurately described the collateral for the loan.

18 We recommend that the Commission find no reason to believe that Trustmark made a
19 prohibited contribution to MC because the totality of the circumstances indicates that Trustmark
20 was assured of repayment when it made the loan. Additionally, we conclude that the inaccurate
21 certification does not constitute an independent violation of the Act or Commission regulations
22 by Trustmark.

23 **II. BACKGROUND**

24 MC, which registered with the Commission on January 15, 2014, is an independent-
25 expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran
26 (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. Brian Perry is
27 the treasurer of MC and its sole director. Corporate Resolution to Borrow / Grant Collateral, Ex.

1 E to Trustmark Resp.; MC Board Minutes of Special Actions, Ex. E to Trustmark Resp.
2 Through October 15, 2014, MC had raised \$3,357,903.00 and disbursed \$3,020,285.90. MC
3 Pre-General Report at 2 (Oct. 23, 2014). MC engaged in less activity after the primary election;
4 since July 1, 2014, MC disclosed receipts of \$390,250, disbursements of \$84,901.35, and cash on
5 hand of \$337,617.10. *Id.*; Oct. Quarterly Rpt. at 2 (Oct. 15, 2014).

6 Trustmark National Bank ("Trustmark") is a nationally-chartered bank headquartered in
7 Jackson, Mississippi, and is MC's depository. Trustmark Resp. at 2; MC Statement of
8 Organization at 4 (Jan. 14, 2014). Harry M. Walker is Trustmark's Regional President of
9 Central Mississippi. Walker Aff. ¶¶ 1-2 (attached to Trustmark Resp.).

10 **A. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an**
11 **Undisclosed Person's CD as Collateral**
12

13 On September 3, 2013, Trustmark created a \$250,000 CD with a nine-month term for an
14 unidentified customer. Book Entry - Certificate of Deposit Receipt, Trustmark Resp. Ex. A;
15 Jeremy Bond Aff. ¶ 3 (attached to Trustmark Resp.). Sometime before January 29, 2014, MC
16 asked this unidentified customer to provide collateral for a loan from Trustmark to MC.
17 Assignment of Deposit Account ("Assignment") at 1, Trustmark Resp. Ex. D. Further, Walker
18 received a request for Trustmark to loan \$250,000 to MC to be secured by the undisclosed
19 depositor's CD, which by that time was worth \$250,543.74. Walker Aff. ¶ 7. Walker directed
20 Jeremy Bond, a Vice President and Branch Manager at Trustmark's Jackson, Mississippi, main
21 office, to prepare the loan paperwork and process the loan. *Id.* ¶ 7, 8. Walker dictated the terms
22 of the loan to Bond, including the interest rate, amount, and maturity date. Bond Aff. ¶ 4.

23 In addition to the loan documents to be signed by MC, the loan paperwork included an
24 Assignment of Deposit Account ("Assignment"), by which the unknown person would pledge
25 the CD as collateral for Trustmark's loan to MC. See Boarding Data Sheet, Trustmark Resp. Ex.

1 C; Assignment of Deposit Account, Trustmark Ex. D. The Assignment provides that it grants
2 Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes
3 Trustmark as a secured creditor under Mississippi law.¹ Assignment at 2-3; Trustmark Resp.
4 at 3-5, 8.

5 On January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents,
6 Bond Aff. ¶ 10, and Trustmark disbursed \$250,000 to MC. Boarding Data Sheet, Trustmark
7 Resp. Ex. C.² MC used the loan funds for a \$219,540 independent expenditure it made two days
8 later for communications opposing candidate Chris McDaniel, Sen. Cochran's opponent in the
9 primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31, 2014) (disclosing that an
10 expenditure was made or obligation incurred on January 31, 2014, for communications opposing
11 McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014) (describing MC's receipt of
12 \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11, 13 (May 17, 2014)
13 (disclosing no cash on hand at the start of the reporting period and the receipt of a total of four
14 itemized contributions before January 31, 2014, totaling \$160,000).

15 Trustmark, however, did not receive the signed Assignment from the CD's owner until
16 February 5, Bond Aff. ¶ 11—one week *after* it had disbursed the loan proceeds to MC.³

¹ Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." Ex. B to Bond Aff. The CD's owner was also prohibited from transferring or encumbering the CD. *Id.*

² The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. Bond explained that the two rates were calculated using different formulas. Bond Aff. ¶ 7. The extra \$150 of the loan principal in the promissory note was for a processing fee.

³ The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 According to Bond, "it is not unusual for a bank to close on a loan without the complete set of
2 signed loan documentation when, as here, there is an existing banking relationship with the
3 individual whose signature is requested, where the individual has committed to sign the
4 paperwork, and where there is no reason to believe that the paperwork will not be signed." *Id.* ¶
5 12.

6 **B. MC Inaccurately Discloses the Trustmark Loan**

7 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,
8 which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees
9 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about
10 these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had
11 *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for
12 the loan as "\$0.00." *Id.* MC also reported that no other parties were secondarily liable for the
13 loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as
14 collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types
15 of collateral described above was pledged for this loan, or if the amount pledged does not equal
16 or exceed the loan amount, state the basis upon which this loan was made and the basis on which
17 it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as
18 the Schedule directs.

19 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as
20 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the
21 disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a

1 basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R.
2 §§ 100.82 and 100.142.⁴

3 MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan
4 documents: the Promissory Note, the Board Resolution, and the Errors and Omissions
5 Agreement. MC did not, however, attach the Assignment, the document indicating that it did not
6 own the pledged CD. Although the Promissory Note states that the collateral for the loan was
7 "certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014,"
8 the documents MC disclosed do not indicate that a third party owned the CD, and MC's
9 Schedule C-1 erroneously states that there was *no* collateral and no secondarily liable party.
10 Trustmark certified these inaccurate representations as true.

11 On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the
12 misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00,
13 Trustmark did not have a secured interest in the collateral, and there were no secondarily liable
14 parties. MC continued to leave blank the space provided to explain how the loan's repayment
15 was assured if the loan was not secured by collateral or future receipts. MC Amended Apr.
16 Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified
17 the accuracy of the information on the form and the loan's compliance with the Commission's
18 regulations. *Id.*

19 On May 15, 2014, the Complainant filed the original Complaint, which relied on the
20 Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan.
21 The Complaint alleged that Trustmark made a prohibited national bank contribution to MC

⁴ This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. *Id.* About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. See MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). But in his sworn affidavit, Walker avers that he was not given the C-1 to sign until April 15. Walker Aff. ¶ 16.

1 because its loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which
2 require a lender to have an assurance of repayment. Compl. at 4-7.

3 Two days later, MC filed its Second Amended April Quarterly Report on which it
4 checked "Yes" in response to the question asking if the loan was collateralized by any one of
5 various types of security, including a certificate of deposit. MC Second Amended Apr.
6 Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC
7 wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that
8 secured the loan, nor did MC provide the loan document that showed that another party owned
9 the CD, much less identify the owner of the CD. MC stated in response to another question on
10 the form that Trustmark had a perfected security interest in the collateral, but it continued to state
11 that no other party was secondarily liable for Trustmark's loan to MC.⁵ MC Second Amended
12 Apr. Quarterly Rpt. at 26 (May 17, 2014).

13 The Amended Complaint, filed on May 19, alleges that Trustmark violated the
14 Commission's regulations because it lacked a perfected security interest in the CD serving as
15 collateral for the loan. *Id.* at 5.

16 MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To
17 date, MC and Trustmark have not identified the owner of the pledged CD.

18 As to Trustmark's allegedly prohibited contribution to MC by making the loan,
19 Trustmark responds that the loan was not a contribution because Trustmark complied with the
20 Act and the Commission's regulations, but even if it was a contribution to MC, the prohibition
21 on national bank contribution is unconstitutional following *Citizens United*. Trustmark Resp. at

⁵ This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But Walker avers that "it is my understanding that [MC] has filed multiple versions of the Schedule C-1 with the [Commission], all of which purport to include an electronic version of my signature. I was never consulted by [MC] prior to its making these additional C-1 filings." Walker Aff. ¶ 17.

1 5-9. According to Trustmark, the pledged CD assured it of repayment and thus the loan was not
2 a contribution from Trustmark to MC. Trustmark Resp. at 5-11.

3 **III. ANALYSIS**

4 **A. Trustmark's Loan Was Not a Contribution to MC Because it was Fully**
5 **Secured**

6 The Amended Complaint alleges that Trustmark made a prohibited contribution to MC -
7 by loaning it \$250,150 without having a perfected security interest in the CD later pledged as
8 collateral. Amend. Compl. at 5.

9 The Act prohibits national banks from making contributions and prohibits political
10 committees from knowingly receiving them. 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
11 § 441b(a)). Contributions include "loans" or "anything of value" made for the purpose of
12 influencing an election, 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do
13 not include bank loans made in the ordinary course of business "on a basis which assures
14 repayment," that are "evidenced by a written instrument and subject to a due date or amortization
15 schedule," and which are made at a usual and customary interest rate for the lender for the
16 category of loan involved. 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii));
17 *see also* 11 C.F.R. § 100.82(a) (a bank loan is not a contribution if it has those characteristics).
18 The record establishes that the loan was made through a written instrument with a due date.
19 Further, there is no allegation or information in the record suggesting that the interest rate
20 (2.86%) on the loan was not Trustmark's usual and customary rate applicable to a loan backed
21 by collateral on deposit equal in value to the loan.

22 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis
23 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,
24 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a

1 loan to be considered "made on a basis that assures repayment," the Commission's regulations
2 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*
3 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is
4 equal to or greater than the loan amount and any senior liens as determined on the date of the
5 loan"; and (c) "the political committee provides *documentation* to show that the lending
6 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)
7 (emphasis added).

8 The transaction between Trustmark and MC clearly did not meet the section
9 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.⁶ If, as in this
10 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the
11 totality of the circumstances on a case-by-case basis in determining whether a loan was made on
12 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).⁷ In past matters, the Commission has
13 concluded that a bank loan did not constitute a prohibited contribution under the totality of the
14 circumstances when the bank made the loan while intending that it would be assured of
15 repayment. See General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not
16 secured by collateral for a period of 90 days nonetheless was assured of repayment under the
17 totality of the circumstances because the bank intended that repayment be assured where, *inter*

⁶ Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. Bond Aff. ¶ 12. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. See Miss. Code Ann. 75-9-314; Trustmark Resp. at 8.)

⁷ See also Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

1 alia, the candidate verbally pledged to use retirement savings to repay the loan); First General
2 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the
3 circumstances, bank intended to assure repayment of the loan and therefore did not make a
4 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit
5 history and relationship with the bank).

6 The available information indicates that Trustmark was assured of repayment when it
7 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the
8 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark
9 worth approximately the same as the loan principal would serve as the loan's collateral, and
10 received the executed Assignment from the CD's owner one week after the loan was made. The
11 Commission therefore finds no reason to believe that Trustmark violated Section 30118(a)
12 (formerly 441b(a)).⁸

13 **B. Trustmark and Walker's Inaccurate Schedule C-1 Certifications are not**
14 **Independent Violations of the Act**

15 Complainant also alleges that Trustmark violated the Act's disclosure requirements
16 because it certified MC's inaccurate statements about the loan on the original Schedule C-1.
17 Amended Compl. at 7, 9. There is no dispute that the bank's certification was inaccurate, but

⁸ Because we recommend that the Commission find no reason to believe that Trustmark made a contribution, it is not necessary to reach Trustmark's argument that the national bank contribution prohibition is unconstitutional in light of *Citizens United*. Trustmark Resp. at 9. We note, however, that *Citizens United* did not address the prohibition against contributions by national banks in Section 30118. The Commission has consistently indicated that this prohibition remains undisturbed by *Citizens United*. See *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 79 Fed. Reg. 62,797, 62,801 (Oct. 21, 2014) (maintaining existing prohibitions against contributions and expenditures by national banks); *Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, 76 Fed. Reg. 8083, 8085 n.6 (proposed Dec. 27, 2011) (Commission's proposed rulemaking to implement *Citizens United* states that "Corporations that are foreign nationals, government contractors, or national banks, and corporations that are organized by authority of any law of Congress continue to be prohibited from making independent expenditures or electioneering communications. 2 U.S.C. 441b, 441c and 441e.").

1 neither the Act nor the regulations attaches liability to the bank certifying the false statements.

2 Instead, the party filing the relevant report is responsible for its accuracy.

3 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees
4 borrowing funds to submit a certification from the lending institution that (1) the borrower's
5 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or
6 line of credit was made or established on terms and conditions no more favorable at the time than
7 those imposed for similar credit granted to borrowers of comparable credit worthiness, and
8 (3) the institution is aware of the requirement for terms which assure repayment and the bank has
9 complied with 11 C.F.R. § 100.82 and 100.142.⁹ See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26 at
10 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it
11 promulgated these regulations, in addition to helping banks avoid making prohibited
12 contributions, these lender certifications serve an important and public role by ensuring the
13 reliability of committee loan disclosures based on information exclusively in the possession of
14 the banks. See *Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.
15 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

16 Trustmark acknowledges that some of Walker's certifications were inaccurate, and
17 explains that Walker focused on the statements on the schedule regarding the loan amount and
18 interest rate, but not the other statements. They state that Walker believed MC was "versed in
19 FEC regulations," so he assumed the other statements on the form were accurate. Trustmark
20 Resp. at 4, 14. It also argues that the errors in the Schedule C-1 were *de minimis*. Trustmark

⁹ Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

1 Resp. at 1, 14. The bank's excuses are weak, and the suggestion that the Commission should
2 overlook the bank's negligence conflicts with the Commission's statements in the Explanation
3 and Justification.

4 Nevertheless, a false or inaccurate certification, standing alone, is not a violation by the
5 *lender* of a duty imposed by the Act or Commission regulations. The Commission's regulations,
6 rather, impose a duty *on committees* to file accurate Schedule C-1s with properly reviewed
7 lender's certifications. Accordingly, the Commission finds that there is no reason to believe that
8 Trustmark violated the Act or Commission regulations when Walker certified the inaccurate
9 Schedule C-1.

10 IV. CONCLUSION

11 Therefore, there is no reason to believe that Trustmark made a prohibited national bank
12 contribution to MC in violation of 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b), or that
13 Trustmark violated the Act or the Commission's regulations when Walker certified MC's
14 inaccurate disclosures regarding Trustmark's loan to MC.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:**

5)
6)
7 Mississippi Conservatives)
8 and Brian Perry in his official capacity as treasurer)
9)

MUR: 6823

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission by
12 Tea Party Patriots Fund and its Chair, Jenny Beth Martin. *See* 52 U.S.C. § 30109(a)(1)
13 (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Mississippi
14 Conservatives and Brian Perry in his official capacity as treasurer (collectively, "MC") violated
15 the Act by: (1) not disclosing that a person made a contribution to MC by pledging a certificate
16 of deposit ("CD") worth approximately \$250,543 as collateral for a \$250,150 loan from
17 Trustmark National Bank ("Trustmark") to MC; and (2) by failing to disclose the identity of the
18 contributor and other loan details in reports filed with the Commission. The Amended
19 Complaint also alleges that MC received a prohibited national bank contribution when Trustmark
20 loaned \$250,150 to MC without having a secured interest in the collateral for the loan.

21 The Commission finds no reason to believe that MC received a prohibited contribution
22 from Trustmark because the totality of the circumstances indicates that Trustmark was assured of
23 repayment when it made the loan. The Commission finds reason to believe that MC violated the
24 disclosure requirements of the Act and the Commission's regulations because the pledge of the
25 CD was a contribution, MC did not identify the contributor and now denies that it must, and MC
26 made repeated inaccurate representations regarding the loan on its reports.

1 **II. BACKGROUND**

2 MC, which registered with the Commission on January 15, 2014, is an independent-
3 expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran
4 (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. MC Resp.
5 at 2; MC Statement of Organization at 1-2. Brian Perry is the treasurer of MC and its sole
6 director. Through October 15, 2014, MC had raised \$3,357,903.00 and disbursed
7 \$3,020,285.90. MC Pre-General Report at 2 (Oct. 23, 2014). MC engaged in less activity after
8 the primary election; since July 1, 2014, MC disclosed receipts of \$390,250, disbursements of
9 \$84,901.35, and cash on hand of \$337,617.10. *Id.*; Oct. Quarterly Rpt. at 2 (Oct. 15, 2014).
10 MC's depository is Trustmark, MC Statement of Organization at 4 (Jan. 14, 2014), a nationally-
11 chartered bank headquartered in Jackson, Mississippi. Harry M. Walker is Trustmark's Regional
12 President of Central Mississippi.

13 **A. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an**
14 **Undisclosed Person's CD as Collateral**

15
16 Information available to the Commission indicates that on September 3, 2013, Trustmark
17 created a \$250,000 CD with a nine-month term for an unidentified customer. Sometime before
18 January 29, 2014, MC asked this unidentified customer to provide collateral for a loan from
19 Trustmark to MC. Further, Walker received a request for Trustmark to loan \$250,000 to MC to
20 be secured by the undisclosed depositor's CD, which by that time was worth \$250,543.74.
21 Walker directed Jeremy Bond, a Vice President and Branch Manager at Trustmark's Jackson,
22 Mississippi, main office, to prepare the loan paperwork and process the loan. Walker dictated
23 the terms of the loan to Bond, including the interest rate, amount, and maturity date.

24 Information available to the Commission further indicates that in addition to the loan
25 documents to be signed by MC, the loan paperwork included an Assignment of Deposit Account

1 ("Assignment"), by which the unknown person would pledge the CD as collateral for
2 Trustmark's loan to MC. The Assignment provides that it grants Trustmark "a security interest"
3 in the CD "to secure" MC's debt to Trustmark, and describes Trustmark as a secured creditor
4 under Mississippi law.¹

5 The available information also indicates that on January 29, 2014, MC's Brian Perry met
6 with Bond to execute the loan documents and Trustmark disbursed \$250,000 to MC.² MC used
7 the loan funds for a \$219,540 independent expenditure it made two days later for
8 communications opposing candidate Chris McDaniel, Sen. Cochran's opponent in the primary.
9 Compl. at 4; MC Independent Expenditure Rpt. (January 31, 2014) (disclosing that an
10 expenditure was made or obligation incurred on January 31, 2014, for communications opposing
11 McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014) (describing MC's receipt of
12 \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11, 13 (May 17, 2014)
13 (disclosing no cash on hand at the start of the reporting period and the receipt of a total of four
14 itemized contributions before January 31, 2014, totaling \$160,000).

15 Trustmark, however, did not receive the signed Assignment from the CD's owner until
16 February 5—one week *after* it had disbursed the loan proceeds to MC.³ There is information in

¹ Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." The CD's owner was also prohibited from transferring or encumbering the CD.

² The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. The two rates were calculated using different formulas and the extra \$150 of the loan principal in the promissory note was for a processing fee.

³ The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 the record before the Commission indicating that it is not unusual for a bank to close on a loan
2 without the complete set of signed loan documentation when, as here, there is an existing
3 banking relationship with the individual whose signature is requested, where the individual has
4 committed to sign the paperwork, and where there is no reason to believe that the paperwork will
5 not be signed.

6 **B. MC Inaccurately Discloses the Trustmark Loan**

7 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,
8 which contained a number of errors and omissions. MC Apr. Quarterly Rpt. at 26. Committees
9 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about
10 these loans. The Schedule C-1 regarding the Trustmark loan inaccurately reported that a CD had
11 *not* been pledged as collateral for the loan, and it erroneously listed the value of the collateral for
12 the loan as "\$0.00." *Id.* MC also reported that no other parties were secondarily liable for the
13 loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as
14 collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types
15 of collateral described above was pledged for this loan, or if the amount pledged does not equal
16 or exceed the loan amount, state the basis upon which this loan was made and the basis on which
17 it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as
18 the Schedule directs.

19 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as
20 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the
21 disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a

1 basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R.
2 §§ 100.82 and 100.142.⁴

3 MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan
4 documents: the Promissory Note, the Board Resolution, and the Errors and Omissions
5 Agreement. MC did not, however, attach the Assignment, the document indicating that it did not
6 own the pledged CD. MC asserts that "the existence of this certificate of deposit as collateral
7 was clearly established" in the Promissory Note. MC Resp. at 11. Indeed, the Promissory Note
8 states that the collateral for the loan was "certificates of deposit described in an Assignment of
9 Deposit Account dated January 29, 2014." Even so, the documents MC disclosed do not indicate
10 that a third party owned the CD, and MC's Schedule C-1 erroneously states that there was *no*
11 collateral and no secondarily liable party. Trustmark certified these inaccurate representations as
12 true.

13 On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the
14 misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00,
15 Trustmark did not have a secured interest in the collateral, and there were no secondarily liable
16 parties. MC continued to leave blank the space provided to explain how the loan's repayment
17 was assured if the loan was not secured by collateral or future receipts. MC Amended Apr.
18 Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified
19 the accuracy of the information on the form and the loan's compliance with the Commission's
20 regulations. *Id.*

⁴ This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. See MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). The record evidence includes information that Walker was not given the C-1 to sign until April 15.

1 On May 15, 2014, the Complainant filed the original Complaint, which relied on the
2 Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan.
3 The Complaint alleged that Trustmark made a prohibited national bank contribution to MC
4 because its loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which
5 require a lender to have an assurance of repayment. Compl. at 4-7.

6 Two days later, MC filed its Second Amended April Quarterly Report on which it
7 checked "Yes" in response to the question asking if the loan was collateralized by any one of
8 various types of security, including a certificate of deposit. MC Second Amended Apr.
9 Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC
10 wrote "Certificate of Deposit." *Id.* MC claims that this Amended Report established that its loan
11 was secured by the undisclosed person's CD. MC Resp. at 11. But MC neither disclosed that it
12 did not own the CD that secured the loan, nor did MC provide the loan document that showed
13 that another party owned the CD, much less identify the owner of the CD. MC stated in response
14 to another question on the form that Trustmark had a perfected security interest in the collateral,
15 but it continued to state that no other party was secondarily liable for Trustmark's loan to MC.⁵
16 MC Second Amended April Quarterly Rpt. at 26 (May 17, 2014).

17 The Amended Complaint, filed on May 19, alleges that the as-yet-unidentified owner of
18 the pledged CD is an undisclosed contributor to MC, and MC violated the Act's reporting
19 requirements by not disclosing this contributor's identity. Amended Compl. at 5-8. It also
20 alleged that Trustmark violated the Commission's regulations because it lacked a perfected
21 security interest in the CD serving as collateral for the loan. *Id.* at 5.

⁵ This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But there is evidence in the record that never consulted Walker prior to amending and filing the reports that continued to bear his electronic signature certifying their accuracy.

1 MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To
2 date, MC has not identified the owner of the pledged CD.

3 As to MC's alleged failure to disclose the identity of the person who pledged collateral
4 for the loan, MC contends that it need not do so. MC Resp. at 13-19 (asserting that Commission
5 regulations require only the disclosure of "guarantors" and "endorsers," thus, "[n]othing in
6 federal campaign finance law provide[s] a reasonable basis upon which to assert that the provider
7 of a certificate of deposit collateralizing a loan is automatically a guarantor or endorser of that
8 loan"). As to MC's receipt of an allegedly prohibited contribution when Trustmark made the
9 loan to MC, Trustmark responds that the loan was not a contribution because the loan complied
10 with the Act and the Commission's regulations. MC Resp. at 8-13.

11 **III. ANALYSIS**

12 **A. Trustmark's Loan Was Not a Contribution to MC Because Trustmark Was**
13 **Assured that It Would be Repaid**

14 The Amended Complaint alleges that MC received a prohibited contribution from
15 Trustmark when Trustmark loaned it \$250,150 without having a perfected security interest in the
16 CD later pledged as collateral. Amend. Compl. at 5.

17 The Act prohibits national banks from making contributions and prohibits political
18 committees from knowingly receiving them. 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
19 § 441b(a)). Contributions include "loans" or "anything of value" made for the purpose of
20 influencing an election, 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do
21 not include bank loans made in the ordinary course of business "on a basis which assures
22 repayment," that are "evidenced by a written instrument and subject to a due date or amortization
23 schedule," and which are made at a usual and customary interest rate for the lender for the
24 category of loan involved. 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii));

1 see also 11 C.F.R. § 100.82(a) (a bank loan is not a contribution if it has those characteristics).

2 The record establishes that the loan was made through a written instrument with a due date.

3 Further, there is no allegation or information in the record suggesting that the interest rate

4 (2.86%) on the loan was not Trustmark's usual and customary rate applicable to a loan backed

5 by collateral on deposit equal in value to the loan.

6 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis
7 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,
8 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a
9 loan to be considered "made on a basis that assures repayment," the Commission's regulations
10 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*
11 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is
12 equal to or greater than the loan amount and any senior liens as determined on the date of the
13 loan"; and (c) "the political committee provides *documentation* to show that the lending
14 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)
15 (emphasis added).

16 The transaction between Trustmark and MC clearly did not meet the section
17 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.⁶ If, as in this
18 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the
19 totality of the circumstances on a case-by-case basis in determining whether a loan was made on

⁶ Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. Bond Aff. ¶ 12. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. See Miss. Code Ann. 75-9-314; Trustmark Resp. at 8.)

1 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).⁷ In past matters, the Commission has
2 concluded that a bank loan did not constitute a prohibited contribution under the totality of the
3 circumstances when the bank made the loan while intending that it would be assured of
4 repayment. *See* General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not
5 secured by collateral for a period of 90 days nonetheless was assured of repayment under the
6 totality of the circumstances because the bank intended that repayment be assured where, *inter*
7 *alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General
8 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the
9 circumstances, bank intended to assure repayment of the loan and therefore did not make a
10 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit
11 history and relationship with the bank).

12 The available information indicates that Trustmark was assured of repayment when it
13 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the
14 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark
15 worth approximately the same as the loan principal would serve as the loan's collateral, and
16 received the executed Assignment from the CD's owner one week after the loan was made.

17 Consequently, the Commission finds no reason to believe that Mississippi Conservatives
18 and Brian Perry in his official capacity as treasurer received a prohibited contribution from
19 Trustmark in violation of Section 30118(a) (formerly 441b(a)).
20

⁷ *See also* Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

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1 amount of the loan exceeds the value of the candidate's ownership share of the collateral.
2 11 C.F.R. § 100.52(b)(4); General Counsel's Rpt. No. 2 at 1-2, 4-7, MUR 5421 (John Kerry for
3 President) (loan to candidate secured by \$12.8 million house that candidate and spouse jointly
4 owned would have constituted a contribution from the spouse if loan amount exceeded \$6.4
5 million, the value of the candidate's ownership share of the house, but it did not); Certification,
6 MUR 5421 (Dec. 12, 2005); Conciliation Agreement at ¶ 14, MUR 5685 (Joe Turnham for
7 Congress) (individual's provision of real estate and stock to serve as collateral for bank loan to
8 candidate constituted a contribution from the owner of the collateral to the candidate); *cf.*
9 Conciliation Agreement at ¶¶ IV.8-12, V.1, MUR 5453 (Trovato) (respondent made a
10 contribution to candidate when he loaned candidate \$300,000 to create a certificate of deposit for
11 use as collateral for loan to candidate).

12 Similarly, the Commission's bank loan exception to the definition of "contribution"
13 provides, among other criteria, that loans secured by "collateral *owned by the candidate or*
14 *committee* receiving the loan" are not contributions. 11 C.F.R. § 100.82(e)(1)(i) (emphasis
15 added). Thus, if the borrower does not own the collateral for the loan, other issues — such as
16 contribution limits, prohibitions, and disclosure requirements — may be implicated. To illustrate
17 this point, 11 C.F.R. § 100.82(e)(1)(ii) provides that loan "[a]mounts guaranteed by secondary
18 sources of repayment, *such as* guarantors and cosigners, shall not exceed the contribution limits
19 of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, 110.20, part 114 and part
20 115." (emphasis added). *See also* 11 C.F.R. § 100.52(b)(3) (endorsers and guarantors "shall be
21 deemed to have contributed that portion of the total amount of the loan for which he or she
22 agreed to be liable in a written agreement").⁸

⁸ We do not need to address Respondents' contention that the contributor did not qualify as either a guarantor or endorser, as Respondents understand those terms, because the disclosure obligations under the Act and

1 The facts and law are clear. MC asked an individual to provide collateral to secure
2 Trustmark's \$250,150 loan to MC. The individual executed an agreement with Trustmark
3 providing that his or her CD would serve as collateral for the loan and be used to pay MC's loan
4 if MC defaulted. As explained above, third-party pledges of collateral for loans to political
5 committees are contributions. Because MC requested and knowingly received this valuable
6 security in order to get its loan, it was an in-kind contribution from the individual to MC. As
7 such, the Act required MC to disclose the identity of the contributor, the date of the contribution,
8 and the amount of the contribution, and it did not.

9 MC argues that MC does not have to disclose the contributor's name because that person
10 was not a "guarantor" or "endorser." MC Resp. at 18-19. This argument essentially ignores the
11 Act's expansive definition of "contribution" to mean "anything of value," including "loans," as
12 well as the Commission's regulations at section 100.52(b) expressly stating that the provision of
13 a security is a "loan" and the statement in section 100.52(d)(1) that provision of a security is a
14 thing of value, thus, an in-kind contribution.

15 Consequently, the Commission finds reason to believe that Mississippi Conservatives and
16 Brian Perry in his official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C.
17 § 434(b)).

18 2. *MC Inaccurately Disclosed Other Information About Trustmark's Loan*

19 Additionally, MC was required to disclose, *inter alia*, "the types and value of traditional
20 collateral or other sources of repayment that secure the loan . . . whether that security interest is
21 perfected" and "[a]n explanation of the basis upon which the loan was made . . . if not made on
22 the basis of either traditional collateral or the other sources of repayment described in 11 C.F.R.

Commission regulations are not limited to only those specific subsets of persons who otherwise provide security for a loan to a political committee. The particular requirements of disclosing in-kind contributions are addressed in 11 C.F.R. § 104.13.

1 100.82(e)(1) and (2) and 100.142(e)(1) and (2)." 11 C.F.R. 104.3(d)(1)(iv). As explained above,
2 MC was also required to submit an appropriate certification from Trustmark regarding the loan.
3 11 C.F.R. § 104.3(d)(1)(v).

4 MC repeatedly violated these regulations by failing to disclose that the loan was secured
5 by collateral and concealing the CD owner's identity. And by failing to reveal the CD's
6 existence for a time, MC obviously failed to disclose that Trustmark had a perfected security
7 interest in it. Additionally, Complainant also alleges that MC violated the Commission's
8 regulations by providing incorrect bank certifications, including the untrue representations in its
9 amended reports that Walker had certified all of the statements in them. MC submitted
10 Amended 2014 April Quarterly Reports with Schedule C-1s that appeared to contain Walker's
11 certification of the inaccurate statements in that report. Amended Compl. at 7, 9.

12 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees
13 borrowing funds to submit a certification from the lending institution that (1) the borrower's
14 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or
15 line of credit was made or established on terms and conditions no more favorable at the time than
16 those imposed for similar credit granted to borrowers of comparable credit worthiness, and
17 (3) the institution is aware of the requirement for terms which assure repayment and the bank has
18 complied with 11 C.F.R. § 100.82 and 100.142.⁹ See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26 at
19 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it
20 promulgated these regulations, in addition to helping banks avoid making prohibited

⁹ Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

1 contributions, these lender certifications serve an important and public role by ensuring the
2 reliability of committee loan disclosures based on information exclusively in the possession of
3 the banks. *See Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.
4 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

5 The information on the Schedule C-1 was not accurate despite Walker's certification that
6 it was. The record includes information that Walker focused on the statements on the schedule
7 regarding the loan amount and interest rate, but not the other statements, apparently believing
8 MC was "versed in FEC regulations" and assuming that the other statements on the form were
9 accurate. The available information indicates that Walker took a number of MC's
10 representations at face value and did not independently verify them. It also appears that MC
11 applied Walker's electronic signature to its amended reports without Walker's knowledge.
12 Consequently, the Commission finds reason to believe that Mississippi Conservatives and Brian
13 Perry in his official capacity as treasurer violated 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).

14 IV. CONCLUSION

15
16 The Commission finds no reason to believe that Mississippi Conservatives and Brian
17 Perry in his official capacity as treasurer received a prohibited contribution from Trustmark in
18 violation of Section 30116(f) (formerly 441a(f)). The Commission finds reason to believe that
19 Mississippi Conservatives and Brian Perry in his official capacity as treasurer violated 52 U.S.C.
20 § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 C.F.R. §§ 104.3(d)(1)(iv)-(v).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT:

)
) MUR: 6823
)
)
)

5
6 Harry M. Walker
7
8

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by
11 Tea Party Patriots Fund and its Chair, Jenny Beth Martin. See 52 U.S.C. § 30109(a)(1)
12 (formerly 2 U.S.C. § 437g(a)(1)). The Complaint, as amended, alleges that Harry M. Walker, a
13 regional president of Trustmark National Bank ("Trustmark"), consented to the making of a
14 prohibited national bank contribution when Trustmark loaned \$250,150 to Mississippi
15 Conservatives ("MC") without Trustmark having a secured interest in a certificate of deposit
16 ("CD") worth approximately \$250,543 that a Trustmark depositor pledged as collateral for the
17 loan. The Amended Complaint also alleges that Walker, acting on behalf of Trustmark, certified
18 a portion of an MC disclosure report that inaccurately described the collateral for the loan.

19 We recommend that the Commission find no reason to believe that Walker consented to a
20 prohibited contribution to MC because the totality of the circumstances indicates that Trustmark
21 was assured of repayment when it made the loan. Additionally, we conclude that Walker's
22 inaccurate certification does not constitute an independent violation of the Act or Commission
23 regulations by Walker.

24 **II. BACKGROUND**

25 MC, which registered with the Commission on January 15, 2014, is an independent-
26 expenditure-only committee supporting multiple candidates, including Sen. Thad Cochran
27 (Miss.), who was a candidate in the June 3, 2014, Republican Senatorial primary. Brian Perry is

1 the treasurer of MC and its sole director. Through October 15, 2014, MC had raised
2 \$3,357,903.00 and disbursed \$3,020,285.90. MC Pre-General Report at 2 (Oct. 23, 2014). MC
3 engaged in less activity after the primary election; since July 1, 2014, MC disclosed receipts of
4 \$390,250, disbursements of \$84,901.35, and cash on hand of \$337,617.10. *Id.*; Oct. Quarterly
5 Rpt. at 2 (Oct. 15, 2014).

6 Trustmark National Bank ("Trustmark") is a nationally-chartered bank headquartered in
7 Jackson, Mississippi, and is MC's depository. MC Statement of Organization at 4 (Jan. 14,
8 2014). Harry M. Walker is Trustmark's Regional President of Central Mississippi. Walker Aff.
9 ¶¶ 1-2.

10 **A. Trustmark Loans \$250,150 to MC and Takes a Security Interest in an**
11 **Undisclosed Person's CD as Collateral**
12

13 The available information establishes that on September 3, 2013, Trustmark created a
14 \$250,000 CD with a nine-month term for an unidentified customer. Sometime before January
15 29, 2014, MC asked this unidentified customer to provide collateral for a loan from Trustmark to
16 MC. Further, Walker received a request — from a person he did not identify — for Trustmark to
17 loan \$250,000 to MC to be secured by the undisclosed depositor's CD, which by that time was
18 worth \$250,543.74. Walker Aff. ¶ 7. Walker directed Jeremy Bond, a Vice President and
19 Branch Manager at Trustmark's Jackson, Mississippi, main office, to prepare the loan paperwork
20 and process the loan. *Id.* ¶ 7, 8. Walker dictated the terms of the loan to Bond, including the
21 interest rate, amount, and maturity date.

22 In addition to the loan documents to be signed by MC, the loan paperwork included an
23 Assignment of Deposit Account ("Assignment"), by which the unknown person would pledge
24 the CD as collateral for Trustmark's loan to MC. The Assignment provides that it grants

1 Trustmark "a security interest" in the CD "to secure" MC's debt to Trustmark, and describes
2 Trustmark as a secured creditor under Mississippi law.¹

3 On January 29, 2014, MC's Brian Perry met with Bond to execute the loan documents,
4 and Trustmark disbursed \$250,000 to MC.² MC used the loan funds for a \$219,540 independent
5 expenditure it made two days later for communications opposing candidate Chris McDaniel, Sen.
6 Cochran's opponent in the primary. Compl. at 4; MC Independent Expenditure Rpt. (January 31,
7 2014) (disclosing that an expenditure was made or obligation incurred on January 31, 2014, for
8 communications opposing McDaniel); MC Amended Apr. Quarterly Rpt. at 17 (May 17, 2014)
9 (describing MC's receipt of \$250,150 in loan funds from Trustmark as "IE Loan"); *id.* at 2, 6, 11,
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11 of a total of four itemized contributions before January 31, 2014, totaling \$160,000).

12 Trustmark, however, did not receive the signed Assignment from the CD's owner until
13 February 5—one week *after* it had disbursed the loan proceeds to MC.³ The available
14 information indicates that it is not unusual for a bank to close on a loan without the complete set
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¹ Under the Assignment, Trustmark had the power to take all funds in the CD and apply them to the loan if MC defaulted. The Assignment also established that: Trustmark possessed the CD; in the event of MC's default on its loan, Trustmark could transfer title to all or part of the CD; the CD's owner, designated the "grantor", "irrevocably appoint[ed] [Trustmark] as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor (and each of them if more than one) as shall be necessary or reasonable"; and Trustmark enjoyed the rights and remedies of a "secured creditor." The CD's owner was also prohibited from transferring or encumbering the CD.

² The Promissory Note, dated January 29 and signed by Perry, specifies that the loan principal was \$250,150, it had a maturity date of June 3, 2014, and the annualized interest rate was 2.650%. The Boarding Data Sheet indicates that the loan had a 2.864 % interest rate. Bond explained that the two rates were calculated using different formulas. The extra \$150 of the loan principal in the promissory note was for a processing fee.

³ The Assignment bears a pre-printed date of January 29, the date Bond generated the loan documents and the date that Perry met with Bond to sign them. It bears Perry's signature below the CD owner's signature, which Trustmark obscured.

1 individual whose signature is requested, where the individual has committed to sign the
2 paperwork, and where there is no reason to believe that the paperwork will not be signed.

3 **B. MC Inaccurately Discloses the Trustmark Loan**

4 On April 15, 2014, MC filed its first quarterly report disclosing the Trustmark loan,
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6 must disclose details about their loans on FEC Schedule C-1 and answer certain questions about
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10 loan. *Id.* The form Schedule also asked if the Committee had pledged its future receipts as
11 collateral, and MC correctly responded "No." The Schedule also asked, "If neither of the types
12 of collateral described above was pledged for this loan, or if the amount pledged does not equal
13 or exceed the loan amount, state the basis upon which this loan was made and the basis on which
14 it assures repayment." MC did not answer this question, nor did it attach the loan agreement, as
15 the Schedule directs.

16 The Schedule C-1 includes both Perry's electronic signature as MC's treasurer as well as
17 what purports to be Walker's electronically-signed certification, on behalf of Trustmark, that the
18 disclosures on the Schedule were accurate, Trustmark was aware that loans had to be made on a
19 basis that assures repayment, and the loan complied with the requirements set forth at 11 C.F.R.
20 §§ 100.82 and 100.142.⁴

⁴ This Schedule C-1, bearing what purports to be Walker's electronic signature and filed by MC with its original April Quarterly Report, is dated January 29, 2014 – the date that Trustmark disbursed the loan funds to MC. *Id.* About two weeks later, MC submitted, as part of a Miscellaneous Report, the original Schedule C-1 hand-signed by Walker, which was also dated January 29. See MC Miscellaneous Rpt. at 1 (Apr. 30, 2014). But in his sworn affidavit, Walker avers that he was not given the C-1 to sign until April 15. Walker Aff. ¶ 16.

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MC filed an April 30, 2014, Miscellaneous Report that attached some of the loan documents: the Promissory Note, the Board Resolution, and the Errors and Omissions Agreement. MC did not, however, attach the Assignment, the document indicating that it did not own the pledged CD. Although the Promissory Note states that the collateral for the loan was "certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014," the documents MC disclosed do not indicate that a third party owned the CD, and MC's Schedule C-1 erroneously states that there was *no* collateral and no secondarily liable party. Trustmark certified these inaccurate representations as true.

On May 12, 2014, MC filed an amended April Quarterly Report, which repeated the misstatements that a CD had not been pledged as collateral, the value of the collateral was \$0.00, Trustmark did not have a secured interest in the collateral, and there were no secondarily liable parties. MC continued to leave blank the space provided to explain how the loan's repayment was assured if the loan was not secured by collateral or future receipts. MC Amended Apr. Quarterly Rpt. at 26 (May 12, 2014). It also continued to represent that Trustmark had certified the accuracy of the information on the form and the loan's compliance with the Commission's regulations. *Id.*

On May 15, 2014, the Complainant filed the original Complaint, which relied on the Schedule C-1 in MC's April Quarterly Report stating that there was no collateral for the loan. The Complaint alleged that Walker consented to Trustmark making a contribution to MC because Trustmark's loan to MC violated the Commission's regulations at 11 C.F.R. § 100.82, which require a lender to have an assurance of repayment. Compl. at 4-7.

Two days later, MC filed its Second Amended April Quarterly Report on which it checked "Yes" in response to the question asking if the loan was collateralized by any one of

1 various types of security, including a certificate of deposit. MC Second Amended Apr.
2 Quarterly Rpt. at 26 (May 17, 2014). In response to the form's direction, "If yes, specify," MC
3 wrote "Certificate of Deposit." *Id.* But MC neither disclosed that it did not own the CD that
4 secured the loan, nor did MC provide the loan document that showed that another party owned
5 the CD, much less identify the owner of the CD. MC stated in response to another question on
6 the form that Trustmark had a perfected security interest in the collateral, but it continued to state
7 that no other party was secondarily liable for Trustmark's loan to MC.⁵ MC Second Amended
8 Apr. Quarterly Rpt. at 26 (May 17, 2014).

9 The Amended Complaint, filed on May 19, alleges that Trustmark violated the
10 Commission's regulations because it lacked a perfected security interest in the CD serving as
11 collateral for the loan. *Id.* at 5.

12 MC repaid the loan by May 30, 2014, a few days short of its June 3 maturity date. To
13 date, MC and has not identified the owner of the pledged CD.

14 III. ANALYSIS

15 A. Trustmark's Loan Was Not a Contribution to MC Because it was Fully 16 Secured

17 The Amended Complaint alleges that Trustmark made a prohibited contribution to MC
18 by loaning it \$250,150 without having a perfected security interest in the CD later pledged as
19 collateral. Amend. Compl. at 5. The Complaint further alleges that Walker, as a bank officer
20 approving a loan that was a prohibited contribution, violated 52 U.S.C. § 30118 (formerly
21 §441b). Compl. at 6; Amended Compl. at 8-9.

⁵ This Amended Report also purported to bear Walker's electronic signature on the amended form's certification. But Walker avers that "it is my understanding that [MC] has filed multiple versions of the Schedule C-1 with the [Commission], all of which purport to include an electronic version of my signature. I was never consulted by [MC] prior to its making these additional C-1 filings." Walker Aff. ¶ 17.

1 The Act prohibits an officer of a national banks from consenting to the bank making
2 contributions. 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). Contributions include
3 "loans" or "anything of value" made for the purpose of influencing an election, 52 U.S.C. §
4 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)), but do not include bank loans made in the
5 ordinary course of business "on a basis which assures repayment," that are "evidenced by a
6 written instrument and subject to a due date or amortization schedule," and which are made at a
7 usual and customary interest rate for the lender for the category of loan involved. 52 U.S.C. §
8 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)); *see also* 11 C.F.R. § 100.82(a) (a bank
9 loan is not a contribution if it has those characteristics). The record establishes that the loan was
10 made through a written instrument with a due date. Further, there is no allegation or information
11 in the record suggesting that the interest rate (2.86%) on the loan was not Trustmark's usual and
12 customary rate applicable to a loan backed by collateral on deposit equal in value to the loan.

13 The Complaint alleges, however, that Trustmark's loan to MC was not made on a basis
14 that assures repayment because there was no collateral for the loan, Compl. at 6, or, alternatively,
15 Trustmark did not have a perfected security interest in the loan. Amended Compl. at 4-5. For a
16 loan to be considered "made on a basis that assures repayment," the Commission's regulations
17 require that the lender (a) "has perfected a security interest in collateral *owned by the candidate*
18 *or political committee receiving the loan*"; (b) that "the fair market value of the collateral is
19 equal to or greater than the loan amount and any senior liens as determined on the date of the
20 loan"; and (c) "the political committee provides *documentation* to show that the lending
21 institution has a perfected security interest in the collateral." 11 C.F.R. § 100.82(e)(1)(i)
22 (emphasis added).

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1 The transaction between Trustmark and MC clearly did not meet the section
2 100.82(e)(1)(i)(a) criterion because MC did not own the collateral for the loan.⁶ If, as in this
3 matter, a loan does not meet the requirements in 100.82(e), "the Commission will consider the
4 totality of the circumstances on a case-by-case basis in determining whether a loan was made on
5 a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).⁷ In past matters, the Commission has
6 concluded that a bank loan did not constitute a prohibited contribution under the totality of the
7 circumstances when the bank made the loan while intending that it would be assured of
8 repayment. See General Counsel's Rpt. No. 2 at 3-8, MUR 5496 (Huffman) (loan that was not
9 secured by collateral for a period of 90 days nonetheless was assured of repayment under the
10 totality of the circumstances because the bank intended that repayment be assured where, *inter*
11 *alia*, the candidate verbally pledged to use retirement savings to repay the loan); First General
12 Counsel's Rpt. at 5-10, MUR 5262 (Second National Bank) (under the totality of the
13 circumstances, bank intended to assure repayment of the loan and therefore did not make a
14 prohibited contribution where it required a cosigner, and the cosigner had a suitable credit
15 history and relationship with the bank).

16 The available information indicates that Trustmark was assured of repayment when it
17 made the loan to MC. Trustmark prepared the Assignment at the same time that it prepared the

⁶ Further, it is questionable whether the loan satisfied 100.82(e)(1)(i)(c) because Trustmark did not receive the signed documentation pledging the CD as collateral for the loan until seven days after it disbursed the loan funds to MC. Trustmark instead relied on a *verbal* pledge from the CD's owner to provide collateral for the loan until the bank received the Assignment, which one of Trustmark's affiants asserted was not unusual. (Upon its later receipt of the Assignment, Trustmark obtained a perfected security interest under Mississippi law in the CD because it was both pledged as collateral and on deposit with Trustmark. See Miss. Code Ann. 75-9-314.)

⁷ See also Factual and Legal Analysis at 2-7, MUR 5766 (Amalgamated Bank) (Commission took no further action after investigation revealed that bank loan that failed to meet regulation's requirements was nevertheless made on a basis assuring repayment under the totality of the circumstances); General Counsel's Rpt. No. 2 at 4-10, MUR 5685 (BancorpSouth Bank) (same); General Counsel's Rpt. No. 4 at 10-16, MUR 5652 (First Bank) (same); First General Counsel's Report at 20-25, MUR 5381 (Bishop) (bank assured of repayment for candidate's line of credit under the totality of the circumstances).

1 remainder of the loan documents, obtained a verbal pledge that a CD on deposit with Trustmark
2 worth approximately the same as the loan principal would serve as the loan's collateral, and
3 received the executed Assignment from the CD's owner one week after the loan was made. The
4 Commission therefore finds no reason to believe that Walker violated Section 30118(a)
5 (formerly 441b(a)).

6 **B. Trustmark and Walker's Inaccurate Schedule C-1 Certifications are not**
7 **Independent Violations of the Act**

8 Complainant also alleges that Walker violated the Act's disclosure requirements because
9 he certified MC's inaccurate statements about the loan on the original Schedule C-1. Amended
10 Compl. at 7, 9. There is no dispute that the bank's certification was inaccurate, but neither the
11 Act nor the regulations attaches liability to the bank officer certifying the false statements.
12 Instead, the party filing the relevant report is responsible for its accuracy.

13 The Commission's regulations at 11 C.F.R. § 104.3(d)(1)(v) require committees
14 borrowing funds to submit a certification from the lending institution that (1) the borrower's
15 statements on the Schedule C-1 are accurate, to the best of the lender's knowledge; (2) the loan or
16 line of credit was made or established on terms and conditions no more favorable at the time than
17 those imposed for similar credit granted to borrowers of comparable credit worthiness, and
18 (3) the institution is aware of the requirement for terms which assure repayment and the bank has
19 complied with 11 C.F.R. § 100.82 and 100.142.⁸ See 11 C.F.R. § 104.3(d)(1)(v); AO 1994-26
20 at 4 (Scott Douglass Cunningham Campaign Committee). As the Commission explained when it

⁸ Schedule C-1 accordingly states that by signing the form, the lending institution is certifying that "To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of the loan are accurate as stated" on the form, the loan was made on terms "no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness," and that "This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and [the lender] has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan."

1 promulgated these regulations, in addition to helping banks avoid making prohibited
2 contributions, these lender certifications serve an important and public role by ensuring the
3 reliability of committee loan disclosures based on information exclusively in the possession of
4 the banks. *See Loans from Lending Institutions to Candidates and Political Committees*, 56 Fed.
5 Reg. 67,118, 67,122. (Dec. 27, 1991) ("Explanation and Justification").

6 Walker acknowledges that some of Walker's certifications were inaccurate. Walker
7 Resp. at 3. He argues that he is not liable for the errors in the Schedule C-1 and that they were
8 *de minimis*. Walker Resp. at 9-12.

9 Nevertheless, a false or inaccurate certification, standing alone, is not a violation by the
10 officer of a lender of a duty imposed by the Act or Commission regulations. The Commission's
11 regulations, rather, impose a duty *on committees* to file accurate Schedule C-1s with properly
12 reviewed lender's certifications. Accordingly, the Commission finds that there is no reason to
13 believe that Walker violated the Act or Commission regulations when Walker certified the
14 inaccurate Schedule C-1.

15 IV. CONCLUSION

16 Therefore, there is no reason to believe that Harry M. Walker consented to making a
17 prohibited national bank contribution to MC in violation of 52 U.S.C. § 30118 (formerly 2
18 U.S.C. § 441b), or that Walker violated the Act or the Commission's regulations when he
19 certified MC's inaccurate disclosures regarding Trustmark's loan to MC.